Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

NO. ~~1349~~ 70-83

FRANK WELLS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

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The petitioner FRANK WELLS respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Appellate Department of the Superior Court for the County of Riverside on October 15, 1970.

OPINION BELOW

Under California Law, the appellate court does not have to render a written opinion. In the instant matter, no written opinion was made; however a copy of the decision of appeal is attached hereto.

JURISDICTION

That on January 12, 1971 petitioner filed an application for extension of time to file petition for writ of certiorari. On January 14, 1971 this court granted an order extending time to file the petition for writ of certiorari until February 13, 1971.

Petitioner seeks to review the judgment of the Superior Court of the State of California, Appellate Department entered on October 15, 1970 and becoming final on October 20, 1970, affirming the conviction of the petitioner in the Municipal Court, Riverside Judicial District.

Jurisdiction is sought under 28 U.S.C. 1257.

QUESTIONS PRESENTED

1. Whether petitioner was deprived of his Constitutional right to a speedy trial as provided for by the Sixth Amendment because the State of California did not file the misdemeanor complaint until almost one year had pssed from the alleged violations and because the complaint was not served until almost two years after the alleged violations.

2. Whether petitioner's sentence was unconstitutional as cruel and unusual punishment.

3. Whether petitioner was deprived of due process by the lower court's order of restitution without conducting any hearing to determine that petitioner in fact should make restitution.

STATEMENT OF THE CASE

On or about April 22, 1966 a misdemeanor complaint was filed in the Municipal Court of Riverside Judicial District, Riverside County, State of California alleging that the petitioner violated Section 2110 of the California Unemployment Insurance Code by wilfully and unlawfully failing to pay trust monies withheld from employees contributions as provided by Section 986 of said code. The complaint alleged two counts. The first count alleged that the petitioner failed to pay $20.92 of insurance contributions withheld from employees wages for the first quarter of 1965. The second count alleged a failure to pay $17.42 of insurance contributions for the second quarter of 1965. After two trials, the petitioner was convicted of both counts and that in December of 1968 the Municipal Court imposed judgment upon petitioner granting him three years probation on the condition that he pay a fine of $625.00, that he serve a 30-day jail sentence and that he make restitution of $5,147.30 before he could be released from custody.

Petitioner filed an immediate notice of appeal to the Appellate Division of the Superior Court of Riverside. On or about October 15, 1970, the appellate division of the Superior Court affirmed the lower court's decision. Since the Appellate Division of the Superior Court did not render a written opinion, the case was not transferred for review by the Court of Appeals of the State of California; therefore, petitioner exhausted his remedy of review in state courts.

The alleged violation of law occurred during the first quarter of 1965 which would have been for January to March of 1965 and the second quarter of 1965 which would have been for March to the end of June. The complaint was not filed until April 22, 1966 and the defendant was not arrested until March 30, 1967 almost two years from the date of the offense.

Under California law the maximum punishment for a misdemeanor of this nature is one year in county jail with a $1,000 fine. The court ordered the defendant to make restitution of $5,000 without conducting a hearing to determine whether or not restitution was in order. The restitution ordered was far in excess of the $38.34 which petitioner allegedly and wilfully withheld.

REASONS FOR GRANTING THE WRIT

1. THE PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL AS PROVIDED FOR BY THE SIXTH AMENDMENT BECAUSE THE STATE OF CALIFORNIA DID NOT FILE THE MISDEMEANOR COMPLAINT UNTIL ALMOST ONE YEAR HAD PASSED FROM THE ALLEGED VIOLATIONS AND BECAUSE THE COMPLAINT WAS NOT SERVED UNTIL ALMOST TWO YEARS AFTER THE ALLEGED VIOLATIONS.

This Court in the case of Klopfer v. North Carolina, 386 U.S. 213, (1966), stated as follows:

> "We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written, 'We will sell to no man, we will not deny or defer to any man either justice or right'; but evidence of recognition of the right to speedy justice in even earlier times is found in the Assize of Clarendon (1166). By the late thirteenth century, justices, armed with commissions of gaol delivery and/or oyer and terminer we visiting the countryside three times a year. These justices, Sir Edward Coke wrote in Part II of his Institutes, 'have not suffered the prisoner to be

long detained, but at their next coming have given the prisoner full and speedy justice, ... without deta ining him long in prison.' To Coke, prolonged detention without trial would have been contrary to the law and custom of England; but he also believed that the delay in trial, by itself, would be an improper denial of justice. In his explication of Chapter 29 of the Magna Carta, he wrote that the words 'We will sell to no man, we will not deny or defer to any man either justice or right' had the following effect:

> 'And therefore, every subject of this realme, for injury done to him in bonis, terris, vel persona, by any other subject, be he ecclesiasticall, or temporall, free, or bond, man, or woman, old, or young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the law, and have justice, and right for the injury done to him, freely without sale, fully without any deniall, and speedily without delay.' "

Furthermore, this court in the case of Smith v. Hooey, 393 U.S. 377, (1968), quoted the Klopfer case, supra, and with reference to a speedy trial stated as follows:

> "Suffice it to remember that this constitutional guarantee has universally been thought essential to protect at least three basic demands of criminal justice in the Anglo-American legal system; '[1] to prevent undue and oppressive incarceration prior to trial, [2] to minimize anxiety and concern accompanying public accusation and [3] to limit the possibilities that long delay will impair the ability of an accused to defend himself.
>
> Finally, it is self-evident that 'the possibilities that long delay will impair the ability of an accused to defend

himself' are markedly increased when the accused is incarcerated in another jurisdiction. Confined in a prison, perhaps far from the place where the offense covered by the outstanding charge allegedly took place, his ability to confer with potential defense witnesses, or even to keep track of their whereabouts, is obviously impaired. And, while 'evidence and witnesses disappear, memories fade, and events lose their perspective', a man isolated in prison is powerless to exert his own investigative efforts to mitigate these erosive effects of the passage of time."

Almost two years passed from the alleged violations until the petitioner became aware of the alleged violations by being arrested. The record and briefs below reflect that the complaint had been filed for almost one year before it was served on petitioner. During this same year, petitioner's whereabouts was known to authorities yet he was not arrested. Petitioner during this period of time maintained the same business and residential addresses. Petitioner was served civil process by Deputy Sheriffs during this period of time so it can be argued that petitioner's whereabouts was known to authorities.

The unreasonable delay has prejudiced petitioner's right to present a complete defense at the time of trial. The record below reflects in petitioner's brief that as a result of the delay petitioner was unable to locate records and witnesses for the trial. See attached appendix 2 which is a copy of an exhibit presented to the appellate division of the Riverside Superior Court.

Attached as Appendix 3 is a copy of a declaration filed in the lower court. This declarant was the employer whose unemployment insurance contributions were allegedly withheld by petitioner. However, the declaration shows records were not available at the time of trial and if they had been, then petitioner did not have to contribute unemployment benefits because declarant was not paid until the third quarter of 1965.

- - -

2. THE PETITIONER'S SENTENCE WAS UNCONSTITUTIONAL AS CRUEL AND UNUSUAL PUNISHMENT.

Petitioner allegedly failed to pay $38.00 of unemployment insurance benefits. This was petitioner's only alleged "criminal activity". He had never been in trouble with authorities before and was a responsible and respected business man. For violating this law, petitioner was given three years probation on the condition that he pay a fine of $625.00, be imprisoned for 30 days, and make restitution of $5,147.30 before his release from custody.

Petitioner argues that this is cruel and unusual punishment on its face and must be reversed.

3. THE PETITIONER WAS DEPRIVED OF DUE PROCESS BY THE LOWER COURT'S ORDER OF RESTITUTION WITHOUT CONDUCTING ANY HEARING TO DETERMINE THAT PETITIONER IN FACT SHOULD MAKE RESTITUTION.

Petitioner allegedly withheld $38.00 of employer contributions. Yet without a hearing on the merits at the time of sentencing he was ordered to make restitution in the amount of $5,147.30. Restitution should only have been in the amount of $38.00. If restitution was in order for other allegedly wilful failure to pay employee contributions then at least additional complaints or other counts should have been filed. No other complaints or counts have ever been filed and the ordered restitution was arbitrary and without the benefit of any hearing and therefore must be stricken from the sentence.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Superior Court of the Appellate Department.

Respectfully submitted,

Frank G. Prantil

FRANK G. PRANTIL
Attorney for Petitioner.

RIVERSIDE COUNTY

OCT 15 1970

DONALD D. SULLIVAN, Clerk

By _____ Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

(APPELLATE DEPARTMENT)

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff & Respondent

vs

FRANK WELLS
Defendant &Appellant

Case No. A-271

DECISION ON APPEAL

The judgment of the Municipal Court, Riverside Judicial District, heretofore entered in this matter, is hereby affirmed.

--------- awarded costs on appeal.

Dated: October 15, 1970

A. Scott Dales

Warren E. Daugherty

Judges of the Appellate Department